

# scottish justice matters

## ENVIRONMENTAL CRIME AND JUSTICE

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# POLLUTION, 'CRIME' AND ILL-HEALTH IMPACTS

'Environmental crimes are increasingly affecting the quality of air, water and soil ... and causing uncontrollable disaster ... environmental crimes also impose a security and safety threat ... and have a significant negative impact on development and rule of law. Despite these issues, environmental crimes often fail to prompt the appropriate governmental response. Often perceived as 'victimless' and incidental crimes, environmental crimes frequently rank low on the law enforcement priority list, and are commonly punished with administrative sanctions, themselves often unclear and low (UNIERI n.d)'.

## Andrew Watterson on the problems of effective control and regulation

**THE** Scottish Government recently introduced welcome new laws in 2013 to address environmental crime with on-the-spot fines of up to £40,000 and established an environmental crime multi-agency taskforce led by the Scottish Environment Protection Agency (SEPA). International environmental crime, the waste industry and large scale environmental degradation as well as fly tipping have all been examined (Scottish Government, 2013). However, this may simply be the tip of a much larger and very toxic 'rubbish dump' of pollution and just as crime knows no boundaries, neither does pollution.

Big crimes by big companies, some based in Scotland, merit close attention. Across the UK, the global financial crisis resulted in cuts in agencies that deal with pollution. Tackling large-scale corporate environmental crime, and ensuring corporate accountability in criminal courts, has proved exceptionally challenging because of the complexity of the laws, the power and resources of those multi-national companies that break the law to defend themselves, and the resources and time needed to prosecute such criminals. Holding the oil industry to account for instance for major failures that affected human health in work and wider environmental settings and corporate governance has proved very difficult (Woolfson and Beck, 2005). The BP Texas refinery explosion and Deepwater Horizon spills in the Gulf of Mexico tell the recent story of failure. If environmental agencies suffer budgetary and related staffing and resource cuts that affect monitoring and detection of pollution, it may be even harder to ensure that those breaking laws will be brought to book. Large polluters, shielded by both corporate lawyers and indeed meaningless forms of corporate social responsibility,

awards and tick-box paper oversight, all too often escape accountability, despite culpability.

There can be immediate and long-term threats for people living next to or near sources of pollution. The worst affected can be in communities and groups that are often, but not always, those most economically disadvantaged. Regulating and, equally important, enforcing effective controls over pollution where it is possible and technically feasible to do so is critical to protect these communities who may be faced with multiple deprivation - unemployment, poor built environment, low pay, ill-health, and contain the most vulnerable populations - the old, the very young, mothers and the sick. Environmental injustice occurs where people with the least power and money suffer most from environmental problems whilst having less of the Earth's resources and benefits (FOES, 2015). Those with the most power and money cause many of these problems by over-consuming and polluting the environment. The exact size of the Scottish environmental justice deficit is unclear but it looks substantial.

However, pollution, from many natural and manufactured chemical, biological and physical agents, can damage all of society. Global climate change from pollution will not avoid Scotland and will affect all. Pollution may also occur and build up over many years and possibly from many sources and sometimes with cumulative and insidious effects. These adverse effects can occur sometimes at astonishingly low levels. Endocrine disruptors and other chemicals can affect humans at parts per trillion. Their effects too may be long term, and even cross generational, and it is unclear that we have effective controls over them. Evidence indicates we do not and



there are international moves for bans. Other air, water, soil and food pollutants may have a wide range of adverse effects, for example leading to chronic and acute respiratory diseases, developmental diseases, reproductive effects and cancers, unless they are also tightly controlled or possibly prohibited.

Pollution, like drugs, may come from legal or unlawful sources. Undoubtedly legal sources in terms of deaths from air pollution can account for a large part of the human, social and economic burden. Industry and governments may breach some national pollution targets and exceed EU and WHO limits with relative immunity. There are often deep tensions between those who want to deregulate or ensure 'light touch' regulation of pollution with controls left to market forces, self-regulation and 'voluntary action' dominating, and those who want effective pollution control based on evidence and precaution and carried through, where necessary, by rigorous regulation and enforcement. Market failures may be overlooked or even condoned in international circles. Some argue, outside the UK, that regulatory agencies 'are intimidated and outgunned and quiescent in the face on industries' assault' and have carefully documented the failures to control corporate industry pollution with regard to climate change science, pesticides, endocrine disruptor research and lead levels in children (Michaels, 2008). Similar threats exist within the UK.

### Scotland needs an effective environmental charter to protect its citizens from both licit and illicit pollution

UK Government research revealed in 2014 that an estimated 2094 deaths each year in Scotland can be linked to air pollution primarily, but not exclusively, from transport fumes and particles, and almost 22,500 life years lost (FOE-Scotland, 2014). No-one is held to account for these deaths. Far fewer deaths occur from road crashes and murders yet these merit criminal charges and long prison sentences. Governments have not been able to take effective action to ensure their own air quality targets are met and regulators and enforcers struggle to catch and deal with the big polluting offenders. This is sometimes because of the problems of identifying and monitoring multiple offenders who all contribute to air pollution over many years. Often the major pollutants remain invisible to the public - unlike paper litter or waste tipping that pollutes our landscape but only sometimes our bodies. Owners of these companies have ended up in courts and been convicted of relatively minor offences.

There are additionally examples across Scotland of industries and companies, such as coal extraction and asbestos manufacture, ceasing to trade and leaving a pollution legacy behind several generations later for workers and communities nearby. Some companies went bankrupt and have never been held legally accountable leaving others including taxpayers to pay for and clean up the pollutants left behind. This begs the question about the ability of government to ensure accountability and control of industries across and beyond their product and production lifecycles.

There are many more challenges now looming, especially for governments, with regard to dealing with pollution by big industries and large transnational companies. The consequences for Scottish public health and regulation will be considerable in relation to air pollution, energy policy and global climate change. These challenges will require high regulatory standards, European and indeed global collaboration, effective enforcement, meaningful financial sanctions in the courts and agencies at national and local level with adequate budgets, resources and staff. Pollution may damage our health in the short term but we should remember that in the long term it will also damage our economy too. Great play is often made by governments with an ideological agenda about the costs of regulation and red tape but relatively little is sometimes known about some of the costs of not regulating the environment. Indeed, polluters may be able to externalise their costs to be picked up by those exposed to pollutants, their communities, the NHS and government itself (Watterson and O'Neill, 2102).

Scotland needs an effective environmental charter to protect its citizens from both licit and illicit pollution. It would ensure citizens were fully informed about decisions and activities affecting their environment and could effectively participate in the decision-making process. It would also prioritise the health of individuals and communities over economy and trade considerations (WHO, 1989). With the Transatlantic Trade and Investment Partnership (TTIP) threatening regulation of chemicals, food and work environments, such rights look increasingly critical to help to prevent environmental crimes at source and at national and international levels. It would require well-resourced and well-staffed regulatory agencies capable of monitoring pollution over significant periods of time and enforcing laws that are powerful enough to hold big as well as small polluters to account with effective fines and other criminal penalties including imprisonment.

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